

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

RICKEY L. MACK,

Plaintiff,

- against -

MIDDLETOWN POLICE DEPT., et al.,

Defendants.

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 9-2-11

**REPORT AND
RECOMMENDATION**

10 Civ. 351 (JSR) (RLE)

To the HONORABLE JED S. RAKOFF, U.S.D.J.:

On March 3, 2010, *pro se* Plaintiff Rickey Mack filed a Complaint, asserting claims against various Defendants (“the Orange County Jail Defendants”) regarding the conditions of his confinement at the Orange County Jail. Following the instructions of the Court, Mack filed an Amended Complaint on June 18, 2010. On August 26, 2010, before he served the Orange County Jail Defendants, Mack filed a Second Amended Complaint, asserting claims against various Defendants (“the Middletown Police Department Defendants”) for police misconduct and ineffective assistance of counsel related to his arrest and prosecution. The Second Amended Complaint did not contain any claims against the Orange County Jail Defendants, and Mack never served the Middletown Police Department Defendants. On March 15, 2011, Mack filed a Third Amended Complaint, asserting claims against both the Orange County Jail Defendants and the Middletown Police Department Defendants. On August 15, 2011, the undersigned ordered Mack to show cause by August 29, 2011, why he has failed to serve Defendants, and warned Mack that failure to respond to the Order might result in dismissal of his case.

As of today, Ferguson has failed to serve any Defendant in this action, which was initiated eighteen months ago. Further, he has not contacted the Court or otherwise shown good cause why service has not been effectuated. Accordingly, I recommend that this action be dismissed without prejudice for failure to comply with Rule 4(m) of the Federal Rules of Civil Procedure.

Pursuant to Rule 72 of the Federal Rules of Civil Procedure, Mack shall have fourteen

(14) days after being served with a copy of the recommended disposition to file written objections to this Report and Recommendation. Such objections shall be filed with the Clerk of the Court, with extra copies delivered to the chambers of the Honorable Jed S. Rakoff, 500 Pearl Street, Room 1340, and to the chambers of the undersigned, 500 Pearl Street, Room 1970. Failure to file timely objections shall constitute a waiver of those objections both in the District Court and on later appeal to the United States Court of Appeals. *See Thomas v. Arn*, 474 U.S. 140, 150 (1985); *Small v. Sec'y of Health and Human Servs.*, 892 F.2d 15, 16 (2d Cir. 1989) (*per curiam*); 28 U.S.C. §636(b)(1) (West Supp. 1995); FED. R. CIV. P. 72, 6(a), 6(d).

DATED: September 2, 2011
New York, New York

Respectfully Submitted,



The Honorable Ronald L. Ellis
United States Magistrate Judge

A copy of this Order was mailed to:

Plaintiff

Rickey Mack

271 East Main Street

Middletown, NY 10940